IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

WP(C).No. 32679 of 2007(M)

PETITIONERS:

1. MOHAMMED, S/O.KUNJUMON,
   VALLIYIL HOUSE, SHAJITHA NILAYAM,
   VADAKEKADU, KUNNAMKULAM, THRISSUR DISTRICT.

2. SHAJITHA, W/O.MOHAMMED, VALLIYIL HOUSE,
   SHAJITHA NILAYAM, VADAKEKADU, KUNNAMKULAM,
   THRISSUR DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:

1. THE DISTRICT COLLECTOR,
   THRISSUR, HAVING OFFICE AT COLLECTORATE,
   AYYANTHOLE, THRISSUR.

2. THE SPECIAL TAHSILDAR,
   LAND ACQUISITION, THRISSUR.

3. THE SECRETARY, KUNNAMKULAM MUNICIPALITY,
   KUNNAMKULAM, THRISSUR.

BY GOVERNMENT PLEADER SRI.BASANT BALAJI.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

W.P.(C) No.32679 OF 2007

Dated this the 26th November, 2007.

J U D G M E N T

The land belonging to the petitioners was acquired for public purpose. They were awarded compensation also. Petitioners did not file any application under Section 18 of the Land Acquisition Act claiming enhancement. Subsequently, he filed a petition under Section 28A of the Land Acquisition Act claiming re-determination of the compensation awarded to them, on the ground that in L.A.R.No.38/2003, the Sub Court had awarded enhanced compensation to adjacent land owner. That application was rejected by the District Collector on the ground that appeals were filed by the State against the judgment and decree passed in L.A.R.No.38/2003 , as L.A.A.No.502/2006 and L.A.A.396/2006, and those appeals were pending. It was further held that the application cannot be considered at that stage. Petitioners were directed to submit applications after the disposal of the appeals by the High Court. Rule 12A (V) of the Land Acquisition (Kerala) Rules, 1990, states that, *'no application under Section 28A shall be entertained, when a land acquisition appeal case is pending before a Court*'.

2. In **Thomas v. District Collector** (2000 (2) KLT 160), a learned Single Judge of this Court held that an application under Section 28A cannot be dismissed, on the ground that appeal is pending. This Court has laid down the procedure to be followed in such cases. It was held that in such cases, applications must be received and kept it pending, and the same shall be disposed of, after disposal of the appeal. So, Ext.P3 order passed by the District Collector rejecting the application is illegal and liable to be set aside. There will be a direction to the District collector to take back Ext.P2 application, and keep it pending till the disposal of the appeal.

In the result, the writ petition is allowed. Ext.P3 order passed by the District Collector is quashed. The District Collector is directed to take back Ext.P2 application filed by the petitioners, and keep it pending till the disposal of the appeals, and take a decision thereafter.

K.PADMANABHAN NAIR,
JUDGE

nj.